

BOUNDARIES OF RESTRICTING THE RIGHTS OF HUMAN AND CITIZEN

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Abstract: *Limitation of rights is a measure proved its effectiveness with positive results for the community in war, military or another emergency. Attitude to rights must be human with a view to the right-to-human relationship because the crossing of a certain boundary leads to a disintegration of rights and a negative impact on the personality. This implies necessity from legal institutionalization of clear criteria to refine the limitation of rights, both for the purpose of their protection and for the purpose of protecting the individual.*

Keywords: rights, needs, limitation, relativity, a measure of freedom

1. Introduction

The concept "boundaries of rights limitation" is polysemantic. On the one hand, the necessary degree of limitation of rights that guarantees the attainment of the legal purpose is taken into account. Necessary, because usually the purpose could be achieved at a higher level, but then citizens would suffer groundless and unjustified interference in their legal sphere. The boundary of limitation of a right is associated with the boundary of overcoming on which the right cannot fulfil its normative purpose.

2. Rights and conscious needs

In the content of the provisions of national, international and Community law the concept of "limitation of rights" is clearly defined and applicable in cases expressly provided for. It is an acceptable measure in the presence of particular circumstances and to achieve legally determined purposes. Limitation of rights is not a process by which a right is transformed into an obligation or a legal impossibility for its

exercise. The right is only limited without excluding its normative purpose.

At the same time, the limited right also needs protection. In addition to the judicial protection, the role of the ombudsman institution is also essential, the modern concept for which imposes several obligations with a view to effective intermediation and protection of citizens' rights [1].

Limitation of rights is concerning the freedom of realization of opportunities that arise for entities. Limitation of a right also means a limitation of the freedom which is an integral part of it. The legal system of law contains the objectively necessary measure of freedom. The criteria for its definition are derivatives of the specifics of good which is an object to the subjective right, and "from what kind of needs and interests stems the need to be distributed the freedom" [2].

The outline of the legal measure is determined by the lower and upper limits of the legislator. This means admissibility of a different individual measure corresponding to the private interests of individuals, whose

parameters are within those limits. According to theory, rights are legal means of satisfying legal interests and needs related to them.

One of the guidelines for the boundaries of rights limitation is, in its exercise, the limited right to be able to fulfill its statutory purpose to satisfy certain needs and related legal interests, albeit in a changed correlation to what was initially determined. This requirement can, in practice, create insurmountable problems in the process of legal regulation, if it is in certain values.

People have different conscious needs and live in a state of diversity and inherent to the social interactions following the current legislation. In the course of their manifestations, they contribute to the maintenance of homeostasis and the development of civil society. The specificity of the conscious needs is expressed not only in nature but also in the degree of interest in satisfying them. This determines the different valuation of goods. The result is the indifference or denial of some persons to particular goods while at the same time attaching a very positive meaning to the same from others. These extremes are explained by the various evaluations of what is useful for them from which it follows the striving to adhere to it, even when it is inconsistent with the mind [3].

Specific is also the process of forming the motives that encourage the implementation of certain legitimate behavior. The exercise of rights is always following the fact that all people are born free, equal in dignity and rights. In this context, it is perfectly acceptable some people not to exercise the rights conferred on them by the State. It is unacceptable and impossible to form a "sense of common purpose"[4] and to direct all entities to achieve it through exercising the rights because it would be contrary to basic legal principles. However, in limiting the rights this is permissible, especially in cases where national security needs to be protected.

3. Relativity of the boundary of rights limitation

As seen, the main difference in the context of what has been said is the magnitude of the legitimate needs and related legal interests which despite global differences do not disturb the equilibrium in the system of existing legally regulated public relations. By focusing on the two extreme states of conscious human needs guaranteed by the regulatory system of law, two exemplary groups of entities are formed, all holders of equal rights established by the State in a normative dependency for a specific legal purpose and connection with legal interests. The abovementioned difference shows that both groups of entities materialize their legitimate behavior in different parameters based on their subjective assessment for what is useful. The first group of entities takes full advantage of the available legal possibilities and the measure of legal freedom under the nature of their needs and interests. The second group of entities is at the other extreme and that is enough for them.

In the same context, when limiting the same rights of both groups of entities, the challenge with the limitation boundary raises different complex problems. Is it appropriate to ask a question related to the boundary of limitation in the presence of these differences? Is the limitation of the same right real, given the fact that persons have different needs and interests? For them, in practice, this right presupposes different parameters of legal regulated behavior comparable to the nature of their defensible needs.

De jure the limitation concerns the same right or rights of all entities to an equal extent, de facto - only of a part of the society. And if for a part of the society the question about the permissible boundaries of rights limitation is relevant, for the other - it is not. This finding places the limitation of rights as well as the boundaries of limitation in a state of relativity.

Any limitation of rights will affect mostly those who have chosen the maximum measure of legal freedom provided by the State and the corresponding to this measure of realization of rights. This means that they will bear the maximum of the unwanted consequences of the restrictive measure, even though the right is equally limited for all entities. What has changed? Normative dependencies are always linked to law-making factors and, in this case, to the change in facts. The new factual situation implies a new complex of possibilities. On the other hand, the exercise of a right, respectively rights, in an unaltered way is already anti-social because it prevents the counteracting and preventing of the anti-social consequences from the existence of the respective restrictive ground. The same could also be a legal ground for criminal prosecution. The situation is different with the conditionally outlined for this study the second group of people. The exercise of the right by them is either socially useful or socially neutral and they may not even ascertain a change in the situation of limitation. It is also quite possible that they are in a state of self-restraint to a degree greater than the restrictive measure applied by the State, which is a result of their free choice and it is in the spirit of the philosophy of legislation and law. The change in the possibilities for exercising the right is not a sanction but a new factual and regulatory dependency. It is, therefore, the subjective right that matters, not the free choice to exercise it.

Relativity could be implemented and appropriately substantiated by other highlights seen as problems even in the contemporary democratic society. Without going into their diversity, I will give the following examples. The first example stems from specificity among members of society that portrays feminism as a significant political ideology with an effect on law-making activity [5].

The second example relates to the place in modern democratic legal systems of the human rights and civil rights of the children and the persons over 18 years of age. Given the uniformity of rights, it is a possible limitation of the same right with holders from both groups, such as the right to information. At the same time, because of the need for a high and effective level of the social and legal protection of children, the exercise of this right is necessary and is dependable on his/her age, education and development [6].

Next, the limitation of rights is a natural process for criminal justice. Nevertheless, this limitation is permissible within certain boundaries corresponding to the requirements of necessity and proportionality following Article 52 of the EU Charter of Fundamental Rights. Legal cooperation between countries guarantees the procedural rights of citizens as the right to a fair trial, an essential part of which is evidence-gathering that ensure the disclosure of the objective truth [7]. Only as a result of a comprehensive criminal investigation it is possible to determine whether there has been a violation of a relevant national legal order and of what would be the publicly justified, lawful and necessary limitation of rights.

4. Boundaries of limitation

Therefore, despite relativity, the boundary of limitation is a problem for those who are normative active and parties to any legal relations, but also for the State, because the change in their legal status as a consequence of the limitation will negatively affect the equilibrium in society, due to the disturbance that will arise in the state of the legally regulated public relations. And this means that the right-limiting entity must necessarily take into account this effect of an inevitable derivative limitation of rights.

The boundary of limiting the citizens' rights also means that there is a limit to the permissible state impact on civil society.

Crossing this limit can exclude the natural interaction between State and civil society or make it difficult, as well as transform the political regime into a totalitarian one [8]. This determines those referred to consequences as the main indicator of approaching or crossing the border of limiting the citizens' rights from modern democratic countries. Therefore, the legal requirement is for rights limitation to the extent necessary and it is directly dependent on the achievement of the legal purpose. Achieving this purpose is always preceded by a process of seeking a balance between the degree and nature of the achieved desired results. This peculiarity justifies the need for opportunities for a timely change in the degree of rights limitation in both possible directions.

As already mentioned, human beings have inherently different needs that are relevant to the normative systems of society. The satisfaction of some of them is achieved through the exercise of rights and the fulfillment of legal obligations. At the same time, meeting the needs is also a process inherent in human beings that has a pronounced effect on their mental and physical condition. All this justifies the need for adequate legal protection by the state. It is expressed in the presence of a wide range of effectively defensible rights and freedoms, adequate to the constructive needs and obligations of human beings, as well as prohibitions regarding degrade ones. In this way, it will not only be possible for the State to provide legal remedies but also to create "the necessary external conditions" [9] for meeting the needs.

Limitation of rights means a change in the remedies and, naturally, in the existing external conditions. A logical consequence of this is the appearance of disturbances in the process of satisfying different needs. A result which negatively affects mental health and it is not far away from psychopathologies [10]. On this basis the impact of rights limitation on the individual

or, more specifically, on certain aspects of the personality, is obvious. Therefore, the higher the degree of limitation on a fundamental right is, such as the right to liberty, the more pronounced is the negative impact on the individual. And the crossing of a certain limit has the potential to degrade it.

Neglecting this circumstance directs the legal impact on the basic biological and social characteristics of the individual as a whole [11]. It is a circumstance that changes the social role and nature of law. Indicators for approaching and crossing this border are not within the competence of lawyers, so in expert groups, it is required to be included and relevant specialists. The applicability of their knowledge in the lawmaking process will preserve the opportunities for the timely defensive reaction of the legislator and law enforcement authorities. And last but not least, regardless of its derivatives, negative effects rights limitation must be useful to society as a whole.

Not only is the degree of restrictive impact relevant to the criterion of "degradation of personality" as a boundary to the permissible limits of the rights. The role of the time factor is also extremely important. Therefore, the limitation of rights is always temporary. Even in the so-called "necessary limitation" which implies compliance with the circumstances, legal objectives and the lack of other means to achieve them, there may be signs of degradation that will be the consequence of the excessive duration of the restriction. Usually, the following relation between the degree of value of a right, the degree of limitation of the right and the duration is taken into account. If the right is high in the scale of human values, two approaches are possible - a higher degree of limitation of rights for a maximum short period or a lower degree for a longer period. There is no exact prescription for correct law-making activity, especially in situations of emergency and pandemic. However, it is

not excluded that contemporary society may allow divergence from this rule in the name of its survival and protection.

5. Conclusion

In today's democracies the relations between rights and freedoms, on the one hand, and on the other - values such as life, health and personality- will become increasingly relevant. This complex dilemma soon will be reflected clearly in the relations between the State and civil society. A possible direction for reflection is the modification of existing needs and related interests, changes in the ways of meeting them, including the emergence of

new ones that will replace some of the existing ones. An argument in this line of thinking is the intensity of Internet use and the importance of communicating through social networks, especially in the current COVID-19 pandemic. The latter brings to the fore the personal data protection of the participants in this type of communication. Protection of personal data as a right and the related right to privacy [12] in the present context is a serious challenge to contemporary countries. This requires the availability of modern tools for reliable protection. These are processes unthinkable without effective cooperation between countries in the field of human rights [13].

References

- [1] Marin, N., Kovacheva, D., Legal Problems and Decisions in the Cooperation between National Ombudsmen in South – East Europe (Правни проблеми и решения при сътрудничеството между националните омбудсмани в Югоизточна Европа), сп. Балканистичен форум, бр. 2/2019 г., ISSN 1310-3970 (Print), 2535-1265 (Online), ЮЗУ, „Н.Рилски“, Благоевград, стр. 296.
- [2] Михайлов, Г., *Регулаторна оценка*, С., изд. „Пропелер“, 2018, стр. 161.
- [3] Аврелий, М., *Към себе си*, С., изд. Хеликон, стр. 43.
- [4] Vasilev, V., Efremovski, Iv. *Organizational culture and motivation in public administration - a relation of the future in the public management*, Journal of Process Management – New Technologies, 2014, p. 103.
- [5] Popov, N., *Feminism as a Political Ideology*, in: „Economic, Social and Administrative Approaches to the Knowledge- based Organization“, Land Forces Academy "Nicolae Balchesku", Sibiu, Romania, pp. 373-375.
- [6] Кръстева, Н., *Наказателно-правна закрила на детето: Предизвикателства в съвременната технологична среда*, изд. „Веда Словена ЖГ“, 2019, стр. 20.
- [7] Voynova, R. *Modern Instruments for Evidence-Gathering in Criminal Matters across EU*, in: „Economic, Social and Administrative Approaches to the Knowledge- based Organization. Conference Proceedings 2“, Land Forces Academy "Nicolae Balchesku", Sibiu, Romania, June 2018, pp. 248-254.
- [8] Колев, Т., *Теория на модерната държава*, С., изд. Сиела, 2018, стр. 366-367.
- [9] Маслоу, Е., *Мотивация и личност*, изд. „Кибеа“, стр. 145.
- [10] Маслоу, Е., Цит. Съч. стр. 142.
- [11] Бойчев, Г., *Правова държава – философско-правни аспекти*, С., изд. „Юриспрес“, 2003, стр. 49.
- [12] Белова-Ганева, Г., *Актуални тенденции в защитата на правата на човека*, изд. „Класик“, 2013, стр. 129.
- [13] Chankova, D., *Rebuilding trust: developing restorative justice in countries in transition*, (in co-authorship with Ivo Aertsen), Restorative Justice: An International Journal, 2015, 3:3, pp. 414-418.